

JOSHUA A. SLIKER, ESQ.
Nevada Bar No. 12493
HILARY A. WILLIAMS, ESQ.
Nevada Bar No. 14645
JACKSON LEWIS P.C.
300 S. Fourth Street, Ste. 900
Las Vegas, Nevada 89101
Telephone: (702) 921-2460
Facsimile: (702) 921-2461
E-Mail: joshua.sliker@jacksonlewis.com
E-Mail: hilary.williams@jacksonlewis.com

*Attorneys for Defendant
eXp Realty, LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LESLIE HENDERSON,
Plaintiff,
vs.
EXP REALTY, LLC,
Defendant.

Case No.: 3:21-cv-00275-MMD-CSD

STIPULATED PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), Defendant eXp Realty, LLC (“Defendant” or “eXp”), and Plaintiff Leslie Henderson (“Plaintiff”), by and through their respective counsel of record, hereby stipulate and agree that the handling of trade secrets and confidential material in these proceedings shall be governed by the provisions set forth below.

I. APPLICATION

This Protective Order shall govern the designation and handling of “Confidential Information” and “Attorneys’ Eyes Only Information” (defined below) produced in this litigation, whether by voluntary production or disclosure or in response to any formal discovery procedure, including designation and handling of nonpublic information of a confidential nature. This Protective Order does not affect any party’s obligations under the Federal Rules of Civil Procedure to produce documents as required by the rules of discovery or an order of the Court. The purpose of this Protective Order is to facilitate the handling of nonpublic information of a confidential,

1 private, or proprietary nature. The mere filing of material containing “Confidential” or “Attorneys’
 2 Eyes Only” by the non-designating party does not remove the material from the protection of this
 3 Protective Order.

4 **II. DEFINITIONS**

5 **A. “Confidential Information”** means: personal information of current or former
 6 employees of the parties (such as non-business addresses, telephone numbers, birth dates, marital
 7 status, dependent status and/or discipline or counseling); financial information, including, but not
 8 limited to, payroll records, tax returns, financial statements, banking records, and electronic data
 9 containing financial information and/or compensation or pay plans or scales; confidential
 10 proprietary and/or competitive business information; trade secrets; witness statements and/or
 11 investigation reports; performance projections; business strategies; and confidential proprietary
 12 information about affiliates, parents, subsidiaries and third-parties with whom the parties to this
 13 action have or have had business relationships. “Confidential Information” includes, without
 14 limitation, any document, information, or material that the producing party or protected person
 15 reasonably believes not to be in the public domain and reasonably believes contains information to
 16 which an individual or company has an established and legitimate right to privacy, confidentiality
 17 or privilege.

18 **B. “Attorneys’ Eyes Only Information”** is a subset of Confidential Information that
 19 contains highly sensitive, proprietary, or trade secret information, the disclosure of which would
 20 create a substantial risk of harm that could not be avoided by less restrictive means, including, but
 21 not limited to medical records and healthcare information pertaining to any current or former
 22 employee of the parties; personnel documents that contain personal identification information such
 23 as social security numbers, financial information and/or rates of pay; information about prior,
 24 existing, and potential customers. All references herein to “Confidential” information include
 25 “Attorneys’ Eyes Only,” except where the permissible disclosure or dissemination of “Attorneys’
 26 Eyes Only” information is more limited than permissible disclosure or dissemination of
 27 “Confidential” information.

28

1 C. “**Disclosed**” is used in its broadest sense and includes, *inter alia*, directly or
 2 indirectly shown, divulged, revealed, produced, described, transmitted or otherwise communicated,
 3 in whole or in part.

4 D. “**Discovery Material(s)**” means any documents, electronically stored information,
 5 answers to interrogatories, responses to requests for admission, deposition testimony, deposition
 6 transcripts and exhibits, other responses to requests for information and/or written information,
 7 whether produced voluntarily or involuntarily, in response to discovery requests in this litigation
 8 by any party.

9 E. “**Document**” is defined as the term is used in Federal Rule of Civil Procedure 34.

10 III. **TYPES OF MATERIALS THAT MAY BE DESIGNATED AS**
 11 **CONFIDENTIAL**

12 Any Discovery Material or other documents, information, or materials may be designated
 13 by a producing party as Confidential under this Order. The assertion of this designation of
 14 “Confidential” shall constitute a representation to the Court that counsel for the producing party or
 15 protected person believes in good faith that the material so designated constitutes Confidential
 16 Information as defined in this Order. Except with the prior written consent of the producing party
 17 or by the Court’s order or as otherwise compelled by force of law, no Discovery Materials or other
 18 documents, information, or materials stamped “Confidential” or “Attorneys’ Eyes Only” may be
 19 disclosed to or used by any person except as permitted in Section V below.

20 IV. **DESIGNATION OF DISCOVERY MATERIALS AS CONFIDENTIAL**

21 A. **Marking Protected Documents:** Protected documents shall be designated as
 22 containing Confidential Information by affixing to them the legend “CONFIDENTIAL” or
 23 “ATTORNEYS’ EYES ONLY” in all caps, at least 10-point bold font, in a location that makes the
 24 designation readily apparent, preferably in the lower left-hand corner. The fact that a document is
 25 stamped “Confidential” or “Attorneys’ Eyes Only” by one party shall not be construed as an
 26 admission by any other party that such document is Confidential Information, nor shall it limit or
 27 preclude the right of any party to object to the designation and to file any appropriate motion(s) to

1 determine the propriety of such designation. If the producing party inadvertently fails to stamp or
2 otherwise appropriately designate or list certain documents, material, or information as
3 “Confidential” or “Attorneys’ Eyes Only” upon their production or disclosure, such inadvertent
4 failure to designate shall not constitute nor be deemed a waiver of a subsequent claim of protected
5 treatment under this Order.

6 **B. Designating Testimony.** Any party may designate testimony as “Confidential
7 Information” by making a statement to that effect on the record at the deposition or other proceeding
8 or within ten (10) days after receipt of the transcript of deposition or other proceeding by counsel.
9 When Confidential Information is designated on the record at a deposition or other proceeding, the
10 party claiming the testimony is Confidential Information shall make arrangements with the court
11 reporter taking and transcribing such proceeding to label each page containing the testimony with
12 the designation “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” and all counsel and parties
13 shall treat pages of testimony so designated as a protected document and the testimony itself as
14 Confidential Information.

15 C. **Subsequent Designation.** If a party discovers that material or documents containing
16 Confidential Information have been provided to the opposing party without being properly
17 designated under this Protective Order, that party shall promptly notify the receiving party in
18 writing of the same. The notification shall include an identification of the documents or information
19 (by bates stamp number or some other specific form of identification), and the receiving party shall
20 affix a stamp identifying each document or item of information so identified as “CONFIDENTIAL”
21 or “ATTORNEYS’ EYES ONLY” within ten (10) days unless the parties agree that some other
22 procedure for remedying the inadvertence is more appropriate under the circumstances.

V. PERMISSIBLE USE OF "CONFIDENTIAL" INFORMATION, DOCUMENTS, OR MATERIALS

25 **A. Limited Use.** All persons receiving or otherwise having access to Discovery
26 Materials or other documents, information, or materials stamped “Confidential” or “Attorneys’
27 Eyes Only” pursuant to this Protective Order shall not reveal or discuss such information to or with
28 any person, except as set forth herein. All Confidential Information produced or exchanged

1 pursuant to this Protective Order shall be used by the party(ies) or person(s) to whom the
 2 information is produced solely for the purpose of this case, through and including appeal(s), if any,
 3 and not for any other purpose, including, but not limited to, personal, business, commercial,
 4 governmental, administrative, alternative dispute resolution or judicial proceedings, unless
 5 compelled by court order or force of law.

6 If a party or any of its representatives, including counsel, inadvertently discloses any
 7 Confidential Information to persons who are not authorized to use or possess such material, the
 8 party shall provide immediate written notice of the disclosure to the party whose material was
 9 inadvertently disclosed. If a party has actual knowledge that Confidential Information is being used
 10 or possessed by a person not authorized to use or possess that material, regardless of how the
 11 material was disclosed or obtained by such person, the party shall provide immediate written notice
 12 of the unauthorized use or possession to the party whose material is being used or possessed. No
 13 party shall have an affirmative obligation to inform itself regarding such possible use or possession.

14 If any person receiving information covered by this Protective Order is: (a) subpoenaed in
 15 another action or proceeding; (b) served with a request or demand in another action to which he,
 16 she, or it is a party; or (c) served with any other legal process by one not a party to this action,
 17 seeking information designated as “Confidential” or “Attorneys’ Eyes Only” pursuant to this Order,
 18 the subpoenaed party shall promptly give written notice, by hand or facsimile transmission, within
 19 forty-eight (48) hours of receipt of such subpoena, request, demand, or legal process to the party
 20 that produced or designated the material as “Confidential” or “Attorneys’ Eyes Only.” The
 21 subpoenaed party or anyone else subject to this Order shall be under no obligation to take any other
 22 action or measures to preserve the confidentiality of any such information in connection with such
 23 subpoena, request, demand, or legal process. Nothing herein shall be construed as requiring the
 24 subpoenaed party or anyone else covered by this Order to challenge or appeal any order requiring
 25 production of Confidential Information, to subject itself to any penalties for non-compliance with
 26 any legal process or order, or to seek any relief from the Court.

27 **B. Disclosure of Protected Material.** Notwithstanding Section V.A. above, access to
 28 documents stamped “Confidential” shall be limited to the following individuals:

1 1. Counsel: Counsel for the respective parties to this Protective Order,
 2 including in-house counsel and counsel's Support Staff (*i.e.*, paralegals, administrative assistants,
 3 and those involved in administration functions), but only to the extent that disclosure to such
 4 person(s) is necessary in order for them to assist attorneys in connection with this matter;

5 2. Professional Vendors: Persons or entities, and their employees, that provide
 6 litigation support services (e.g., copy services, translation services, document preparation, trial
 7 graphics, and tutorials, and organizing, storing or retrieving data), but only to the extent that
 8 disclosure to such vendors is necessary in order for them to assist attorneys in connection with this
 9 matter, and provided that such vendors have been made aware of the provisions of this Protective
 10 Order and have manifested their assent to be bound thereby by signing a copy of the agreement
 11 attached hereto as Exhibit A before being shown or given any Confidential Information;

12 3. Court Reporters: Court reporters taking testimony and their support
 13 personnel;

14 4. The Parties: Except as provided below in Section V.C., the parties to this
 15 Protective Order, including the officers, directors, agents and employees of a corporate Party, to
 16 the extent counsel for such party reasonably deems it necessary for the prosecution or defense of
 17 this proceeding;

18 5. The Court: The Court and its support personnel, who shall maintain
 19 confidentiality consistent with FRCP 26(c);

20 6. Witnesses: deposition or other witnesses as necessary in this litigation,
 21 provided that such persons have been made aware of the provisions of this Protective Order and
 22 have manifested their assent to be bound thereby by signing a copy of the agreement attached hereto
 23 as Exhibit A before being shown or given any Confidential Information, and provided further that
 24 disclosure is limited to Confidential Information about which the witness is or is likely to be
 25 examined at a deposition or other proceeding;

26 7. Consultants and Experts: Independent consultants or experts retained by
 27 counsel or a party for assistance with respect to this case, together with each such person's clerical
 28 and Support Staff, provided that such consultants and/or experts have been made aware of the

1 provisions of this Protective Order and have manifested their assent to be bound thereby by signing
 2 a copy of the agreement attached hereto as Exhibit A before being shown or given any Confidential
 3 Information, and provided further that if the party chooses a consultant or expert who is currently
 4 or was at any time in the last five (5) years employed by or otherwise affiliated with Plaintiff or one
 5 of its competitors, the party shall notify the opposing party before disclosing any Confidential
 6 Information to that individual and shall give the opposing party an opportunity to move for a
 7 protective order preventing or limiting such disclosure;

8. The persons who are identified as authors or addressees on the face of a
 9 document containing Confidential Information, or have been shown by either testimony or
 10 documentary evidence to have been recipients or readers of the Confidential Information prior to
 11 the commencement of the underlying lawsuit, provided that such persons have been made aware of
 12 the provisions of this Protective Order and have manifested their assent to be bound thereby by
 13 signing a copy of the agreement attached hereto as Exhibit A before being shown or given any
 14 Confidential Information;

15. The videographer who videotapes Confidential Information at a deposition
 16 in this litigation;

17. Any court, mediator or discovery referee in this litigation, and employees
 18 and similar personnel of said court, mediator or discovery referee;

19. Any other individuals agreed to in writing by the designating party; and

20. Others as may be ordered by the Court.

21. **C. “Attorneys’ Eyes Only.”** The disclosure of “Attorneys’ Eyes Only” Information is
 22 limited in the same ways as set forth above for Confidential Information except that, with respect
 23 to Parties under Section V.B.4, “Attorneys’ Eyes Only” Information may not be disclosed to anyone
 24 except Defendants Peters and Perez, one collective representative for the remaining Defendants,
 25 and a representative of Plaintiff. Such persons are only permitted to review “Attorneys’ Eyes Only”
 26 information produced by another party, provided they agree, in advance, not to use, retain, or make
 27 copies or summaries (including, but not limited to, photographs or videos) of “Attorneys’ Eyes
 28 Only” information after their review. Except as provided in this paragraph, “Attorneys’ Eyes Only”

1 information may not be disclosed or provided without prior written consent by the designating party
 2 under circumstances allowing the designating party to obtain adequate protection with respect to
 3 the “Attorneys’ Eyes Only” Information either by agreement or by application to the Court. Further,
 4 any person who receives copies of “Attorneys’ Eyes Only” Information or to whom “Attorneys’
 5 Eyes Only” Information is disclosed pursuant to this Stipulated Protective Order shall be advised
 6 that the “Attorney’s Eyes Only” information is being disclosed pursuant to an Order of the Court,
 7 that the information may not be disclosed by such person to any person not permitted to have access
 8 to the “Attorney’s Eyes Only” information pursuant to this Protective Order, and that any violation
 9 of this Protective Order may result in the imposition of such sanctions as the Court deems proper.

10 **D. Disputes as to Confidentiality Designation:**

11 1. **Meet and Confer Requirement:** The parties agree to designate information
 12 as “Confidential” and/or “Attorneys’ Eyes Only” on a good faith basis and not for purposes of
 13 obstructing the receiving party’s access to information concerning the lawsuit. If any party believes
 14 that a document, tangible item, or other information that has been designated as “Confidential” or
 15 “Attorneys’ Eyes Only” is not entitled to be treated as such, the party will notify the designating
 16 party of its objection to the “Confidential” or “Attorneys’ Eyes Only” designation. The parties shall
 17 meet and confer in an attempt to reach an agreement regarding the confidential status of the
 18 document, tangible item or information within seven (7) days after the objecting party has advised
 19 the designating party of its objection.

20 2. **Motion for Protective Order:** If the dispute is not resolved, then the
 21 objecting party may file a motion challenging whether any particular material designated as
 22 containing Confidential Information should be entitled confidential treatment. The party
 23 designating particular information as confidential under the protective order shall have the burden
 24 of proving that the information or document is entitled to such protection.

25 3. **Status Pending Resolution of Dispute:** Notwithstanding any challenge to
 26 the designation of material as containing Confidential Information, the material shall be treated as
 27 Confidential and shall be subject to the provisions hereof unless and until one of the following
 28 occurs: (i) all parties that claim that the material contains Confidential Information withdraw such

1 designation in writing; or (ii) the Court rules that the material does not contain Confidential
2 Information.

3 **E. Rights of Parties:** This Protective Order is without prejudice to the right of any
4 party to apply to the Court for any further protective order relating to any Confidential Information
5 or for an order permitting disclosure of any Confidential Information beyond the terms of this
6 Protective Order.

VI. MISCELLANEOUS

8 A. All provisions of this Protective Order restricting the communication or use of
9 Confidential Information shall continue to be binding after the conclusion of this case, unless
10 otherwise agreed or ordered. Upon conclusion of the case, a party in the possession of Confidential
11 Information, other than that which is contained in pleadings, correspondence, and deposition
12 transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of
13 this case to counsel for the party who provided such information, or (b) destroy such documents
14 within the time period upon consent of the party who provided the information and certify in writing
15 that the documents have been destroyed.

16 B. Nothing herein shall be deemed to waive any applicable privilege or work product
17 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
18 protected by privilege or work product protection. Any witness or other person, firm or entity from
19 which discovery is sought may be informed of and may obtain the protection of this Stipulated
20 Protective Order by written advice to the parties' respective counsel or by oral advice at the time
21 of any deposition or similar proceeding.

22 | //

23 | //

24 | //

25 | / / /

26 | //

27 | / / /

28 | //

1 C. Nothing in this Order shall prevent any party or other person from seeking
2 modification of this Order or from objecting to discovery that it believes to be otherwise improper.
3 This Order, however, shall not be modified absent an order of the Court or the written agreement
4 of all the Parties hereto.

5 DATED this 2nd day of March, 2022.

6 JACKSON LEWIS P.C.

7 /s/ Joshua A. Sliker
8 JOSHUA A. SLIKER, ESQ.
9 Nevada Bar No. 12493
10 HILARY A. WILLIAMS, ESQ.
11 Nevada Bar No. 14645
12 300 S. Fourth Street, Suite 900
13 Las Vegas, Nevada 89101

14 *Attorneys for Defendant*
15 *eXp Realty, LLC*

6 MARK MAUSERT LAW

7 /s/ Mark Mausert
8 MARK MAUSERT, ESQ.
9 Nevada Bar No. 2398
10 SEAN McDOWELL, ESQ.
11 Nevada Bar No. 15962
12 729 Evans Avenue
13 Reno, Nevada 89512

14 *Attorneys for Plaintiff*
15 *Leslie Henderson*

14 **ORDER**

15 March 3, 2022

16 Dated

17 IT IS SO ORDERD.

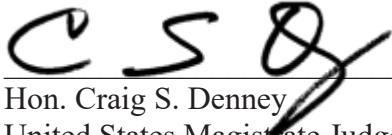
18 
19 Hon. Craig S. Denney
20 United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT
TO MAINTAIN CONFIDENTIALITY

3 I, _____, understand that one of the Parties in this litigation (*Leslie*
4 *Henderson v. eXp Realty, LLC*, Case No. 3:21-cv-00275-MMD-WGC, U.S. District Court, District
5 of Nevada) desires to disclose to me certain documents, information, and/or materials that has been
6 designated as “Confidential” or “Attorneys’ Eyes Only” in nature. I have read and I understand the
7 Stipulated Protective Order to which this Acknowledgment and Agreement is attached. I understand
8 and acknowledge that the Stipulated Protective Order governs my use of the Confidential Information
9 and I agree to be bound by the terms of the Stipulated Protective Order. I agree that I will not disclose
10 any Confidential Information or other documents, information, and/or materials designated as
11 “Confidential” or “Attorneys’ Eyes Only” (including any copies, summaries, extracts or notes of any
12 such information) to any individual, agency or entity, except those persons to whom disclosure is
13 permitted under this Stipulated Protective Order. I further agree and hereby submit myself to the
14 personal jurisdiction of the U.S. District Court, District of Nevada with respect to any proceedings for
15 enforcement of, or sanctions in connection with my use of Confidential Information under this
Stipulated Protective Order.

16 _____
17 _____
18 Date _____ Signature _____

19 _____
Type or Print Name

²⁰ See, for example, the discussion of the 1990s in the section on the 'New Right' in this volume.

22 ||

23 Title (if applicable)